IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10316 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

USHABEN @USHA PANDE D/O SARDARILAL K SHARMA

Versus

COMMISSIONER OF POLICE

Appearance:

MR ANIL S DAVE for Petitioner

MR KT DAVE, AGP, for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 24/04/2000

ORAL JUDGEMENT

1. Commissioner of Police, Ahmedabad City, Ahmedabad, passed an order on November 16, 1999, detaining Smt.Ushaben @ Usha Pande, daughter of Sardarilal Karamchand Sharma, of Amraiwadi, Ahmedabad, under the provisions of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA Act" for short).

2. The detaining authority took into consideration four offences registered against the detenu under the Bombay Prohibition Act and statements of two anonymous witnesses, while passing the order. In the grounds of detention, the detaining authority recorded a satisfaction that the detenu is a bootlegger and that her activities are detrimental to public order. The authority further observed that resorting to less drastic remedy is not possible as she is required to be immediately prevented from pursuing her activities and, for that purpose, detention under the PASA Act is the only efficacious remedy and, thus, the order came to be passed.

3. The detenu has challenged the order of detention on various counts. However, learned advocate, Mr. Anil Dave, appearing for the petitioner has urged only two grounds. The first being that there is improper exercise of powers under Section 9(2) of the PASA Act. In order to substantiate his arguments, he submitted that the statements of anonymous witnesses have been recorded by the sponsoring authority on November 13 and 16, 1999. The statements have been verified by the detaining authority on November 16, 1999 and the order is passed on that very day, i.e. November 16, 1999. He, therefore, urged that the authority had no time to undertake the exercise expected of it while exercising the powers under Section 9(2) of the PASA Act.

3.1 Mr. Dave further submitted that the statements of witnesses recorded by the Investigating Agency in respect of the registered offences have not been supplied. Giving details, he submitted that in respect of C.R. No.5542 of 1999, statements of witnesses Bhagwanbhai and Nathubhai are not supplied. As regards C.R. No.909 of 1999, statements of none of the witnesses are supplied. In respect of C.R. No.919 of 1999, statement of witness Narsinh is not supplied and, lastly, in respect of C.R. No.5552 of 1999, statement of only one witness-Ranchhodbhai is supplied. Statements of rest of the witnesses are not supplied. He, therefore, submitted that the right of the detenu of making an effective representation is adversely affected and, therefore, the detention and the continued detention, therefore, would be bad in law. He, therefore, submitted that the petition may be allowed.

4. Mr. K.T. Dave, learned Assistant Government Pleader, has opposed this petition.

5. Considering rival side contentions, it appears that the statements of anonymous witnesses have been recorded by the sponsoring authority on November 13 and 16, 1999. The same have been verified by the detaining authority on November 16, 1999 and the order is passed on that very day. So far as the statements of anonymous witnesses are concerned, it may be noted that the detaining authority has observed that the fear expressed by the witnesses and the statements and the statements are correct and genuine. Barring this statement in the grounds of detention, there appears nothing to indicate an exercise having been undertaken by the detaining authority for verifying correctness and genuineness of the statements and the fear expressed by the witnesses. The detaining authority has to take into consideration the background, the antecedents, the character, etc. of the detenu while considering the need for exercise of powers under Section 9(2) of the PASA Act. The authority has to scale the right of the detenu of making an effective representation on the one hand and the public interest on the other and has to strike a balance between the two. The detaining authority has not filed any affidavit nor is there any contemporaneous material to indicate undertaking of such exercise by the detaining authority and, therefore, the exercise of powers under Section 9(2) of the PASA Act can be taken to have vitiated. No reliance, therefore, can be placed on these statements for sustaining the order of detention. There is improper exercise of powers under Section 9(2), as there is no material to indicate the exercise as stated above (Bai Amina v. State of Gujarat & Ors., 1981 GLR 1186 and Kalidas Chandubhai Kahar v. State of Gujarat & Ors., 1993(2) GLR 1659).

6. So far as the contention of non-supply of documents is concerned, it is not disputed by the other side. No affidavit-in-reply is filed by the detaining authority. Therefore, the right of the detenu of making an effective representation as envisaged under Article 22(5) of the Constitution is affected and this would vitiate the continued detention of the detenu.

7. In view of the above discussion, the petition is allowed. The impugned order of detention dated November 16, 1999, passed against the detenu is hereby quashed. The detenu-Smt. Ushaben @ Usha Pande, daughter of Sardarilal Karamchand Sharma, is ordered to be set at liberty forthwith, if not required in any other matter. Rule is made absolute with no orders as to costs.

8. Mr. Dave, learned advocate appearing for the petitioner, states that the detenu is, at present in Vadodara prison. Writ, therefore, to go to that prison.

[A.L. DAVE, J.]

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